

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

JOHN SIGLEY

Plaintiff,

v.

**Civil Action No. 1:04CV184
(BROADWATER)**

JO ANNE B. BARNHART,
Commissioner of Social Security,
Defendant.

ORDER ADOPTING MAGISTRATE’S REPORT AND RECOMMENDATION

On this day the above styled case came before the court for consideration of the Report and Recommendation of Magistrate Judge John S. Kaull, dated September 30, 2005, and the plaintiff’s objections thereto filed on October 11, 2005. In the interests of justice and in accordance with 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review.

The Court, after reviewing the above, is of the opinion that the Magistrate Judge’s Report and Recommendation should be and is hereby ORDERED adopted. Plaintiff objects to the Report and Recommendation’s finding that the Administrative Law Judge adequately evaluated the opinion of the petitioner’s treating physician in reaching his decision. The court notes that Plaintiff’s objection to the Magistrate Judge’s findings is general and conclusory, and amounts to a restatement of plaintiff’s initial argument presented in his April 18, 2005, Motion for Summary Judgment (Docket No. 8).

Under the applicable standard of review, the courts’ inquiry is limited to determining whether “the findings of the Secretary are supported by substantial evidence and whether the correct law was applied.” Hays v. Sullivan, 907 F. 2d 1453, 1456 (4th Cir. 1990). In this case the Administrative Law Judge (ALJ) evaluated and considered the medical opinion of Dr. Eric. T. Jones,

before rejecting some of Dr. Jones' findings. The ALJ's determination that Mr. Sigley does not meet the disability criteria, despite Dr. Jones' opinion to the contrary, was supported by substantial evidence and was arrived at through the proper application of law. The specific opinion of Dr. Jones, that the plaintiff may need to lie down periodically throughout the day, is a part of the treating physician's assessment of the patient's impairments and treatments. The ALJ's decision that there is substantial evidence in the record which is inconsistent with Dr. Jones' medical opinion meets the standard of review. Specifically, the ALJ considered Dr. Jones' role as the primary, "treating physician," in accordance with SSR 96-2p. The ALJ also considered the evaluations of other physicians, the results of objective diagnostic tests, and Mr. Sigley's willingness to pursue various available courses of treatment.

The Court, therefore, ORDERS that the defendant's motion for summary judgment be GRANTED. The Court ORDERS that plaintiff's motion for summary judgment be DENIED. It is further ORDERED that this action be DISMISSED WITH PREJUDICE based on the reasons set forth above and in the Magistrate Judge's Report and Recommendation, and STRICKEN from the active docket of this Court.

It is so ORDERED.

The Clerk is directed to transmit true copies of this order to the petitioner and all counsel of record herein.

Dated this 4th day of January 2006.


W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE